

October 7, 2014

The Manasquan Planning Board held a Regular meeting at 7PM on Tuesday, October 7, 2014 in the Council Chambers of the Borough Hall, 201 East Main Street, Manasquan, NJ.

The Chairman greeted everyone and asked all present to stand and salute the Flag.

ROLL CALL:

Board Members Present:

Mayor George Dempsey, Chairman Neil Hamilton, John Muly, Paul Rabenda, Councilman Owen McCarthy, John Burke, Greg Love, Leonard Sullivan, Peter Ragan, Mark Apostolou, Kevin Thompson

Board Members Absent:

Joan Harriman, Robert Young (Mayor's Alternate)

Professionals Present:

Geoffrey S. Cramer – Board Attorney

Raymond Savacool – T & M Planner/Engineer

Attorney, Geoffrey S. Cramer read the Open Public meetings statement.

Informal 15-Minute Presentation - Frank Morris with Keith Henderson representing him as Council regarding the possibility of a subdivision at 30 Ocean Avenue. Mayor Dempsey left the Dias as he had a conflict. Keith Henderson gave the background of what Mr. Morris is proposing which is to divide the lot which is extremely deep into three lots which would in his opinion is a C-1 or a C-2 Variance for two lots which would not be fronting on a Street. All the lots would conform fully with the requirements of the Zoning Ordinance other than the fact that they don't front on the Street. The total square footage of the property is over 15,000. One of the lots would be 5,100, one would be 5,000 and the other would be 5,590-square feet. We would meet all the setbacks and would not be asking for any Variances for the houses which are being constructed on there. If you look at the map we submitted, there would be a 12-foot easement for access and also for utilities on the south side of the property. The only reason we are here is because we don't have frontage for two of the lots. This Board has had similar applications before, he has handled several of them but this is the first one where all the lots are conforming. This piece of property runs from Ocean Avenue down to Stockton Lake. He had Frank Morris prepare an exhibit of all the properties on the Street and he will pass it around, essentially the yellow lots are

non-conforming lots, the green are non-conforming subdivisions, the orange are non-conforming but they are subdivided, and there are black lines for some of the driveways which are very similar, most of them are narrower than what we are asking for. This property was severely damaged in Sandy and there are three houses on there now. All three houses suffered pretty severe damage. This would give the Town three new ratables; they would be built in conformance with the FEMA Codes, Flood Codes, Hurricane, Fire, etc. We have architectural sketches of the houses to be built, Mr. Moore is the architect, the houses all have character, nice architectural features and again all conform. Neil said right now we are just talking about what we are going to do with the property. Owen had a question regarding the middle lot, and the parking there. Parking is certainly a challenge on Ocean Avenue primarily even now with the bridge being out; we get significant complaints from residents all along Ocean Avenue. Other members of the Council have received comment about perhaps making Ocean Avenue no parking on one side of the Street. Mr. Moore said he has elevated the center house to allow parking underneath. The driveway would be on the eastern side which was later changed to the southerly side, and they stipulated they would not be seeking a parking Variance. Neil asked Ray Savacool if he had any comments on this. His concern was trying to back a car out into a 12-foot driveway easement and not encroach on the neighboring property. Neil said his assessment is made from years of dealing with Code issues and being here for such a long time, years ago there were bungalows there and they were converted and now we have million dollar homes sitting up there on the water, we've got a lot of congestion because there is no parking on Ocean Avenue. You got two houses in the front, two or three in the back, courtyard parking, and entertainment of guests on the weekends and there is no where to park. We have rid ourselves of so many of the rental properties down there that were issues with parking. How did these things happen in years past, but they did and we are dealing with them? It is his opinion only and he can support two homes, but he cannot support three. Keith Henderson said the governing body has made a determination that 5,000-square feet is the appropriate density for that area, that's what they Zoned it, and that's what we are adhering to and he thinks if the parking is the big concern we can focus in on that and see if we can provide more parking. We are meeting your requirements for parking now, we will take a hard look at that but you would be looking at that with two lots for a long time because it isn't going to work. Owen said parking is a concern, the other issue is the house on the water, for emergency vehicles to be able to access. He would want the Fire Official to look at it, speak more professionally and be comfortable for whoever purchased this property as well as anyone who may be there as a volunteer. Mark Apostolou said those are his concerns. Neil asked for comments from the Board. John Burke said if you can get four parking places on each lot he would be inclined to be in favor of it. That ended the presentation.

APPLICATION #33-2014 – Fuhrmann, Patrick (John) – 568 Marlin Avenue – Block: 182.02 – Lot: 10 – Zone: R-3 – Tom Peterson, Architect appeared with Mr. Fuhrmann to testify. The Board accepted his credentials and Mr. Cramer swore in Mr. Fuhrmann, owner/applicant, Tom Peterson, Architect, and Ray Savacool, T & M Planner/Engineer. Mr. Fuhrmann was the first to testify, he stated his house was severely damaged in Super Storm Sandy, he is requesting relief for building coverage as the house they are planning to

construct will be over on building coverage by 2.8%. Right now their house is a bungalow and they want to construct a new house that is similar to other ones in the neighborhood. Neil said he needs to explain the need to be over on building coverage. Tom Peterson had pictures which Geoff entered as Exhibit A-1 which contained a Google map of the site, pictures of the house to be replaced and other houses next door and in the neighborhood. Tom continued to explain that they could make the covered porch smaller, cut of a few square feet of the porch area. The covered porch although it counts as building coverage doesn't appear the same as building coverage, it doesn't have the same mass, it doesn't have the same look it's much more lighter, it's much more area, much more in keeping with that shore style vernacular of architecture. Tom said we come before the Board, Patrick has talked to the neighbors, and there are no objections it is welcomed with overwhelming favor. It also falls under the planning logic no harm no foul, soft C Variance. This nice new home would certainly be a benefit to the neighborhood and the Town. Neil asked what they are over by square footage and the answer was 95-square feet. Ray Savacool said the 95-square-feet is 2.8%, the front porch accounts for 186-square feet, about 5.5% of that building coverage. Neil said so you would have to pull a foot or a foot and one-half to get it to comply. Tom Peterson said or what we would do is just not make it a full covered porch. The living area of the house is the same as what's next door within a few square feet and also the same as the house two houses to the west. Neil said this is such a diminimus request, we didn't require an Engineer's report on this. John Muly said the TRC asked that the applicant give his reason for wanting to exceed the lot coverage. You have already done that. Lenny Sullivan said it's a beautiful home, it's 2%, he doesn't have a problem, other Board members stated their agreement. George Dempsey said if they shortened the porch it wouldn't look right. Owen said it's in keeping in uniformity with other properties in the neighborhood. Mayor Dempsey made a motion to open the meeting to the public, seconded by John Muly, all in favor none opposed. There was no audience participation; Kevin Thompson made a motion to close the public portion seconded by Councilman McCarthy, all in favor none opposed. Tom Peterson gave his closing statement. John Burke made a motion to approve the application, the motion was seconded by John Muly.

Board Members Voting Yes:

Mayor George Dempsey, John Muly, Paul Rabenda, Owen McCarthy, John Burke, Greg Love, Leonard Sullivan, Peter Ragan, Kevin Thompson and Neil Hamilton.

Board Members Voting No:

Mark Apostolou

APPLICATION APPROVED

APPLICATION #14-2014 – 125 Main Street, LLC – Vowell/Kim – 125 Main Street – Block: 65.01 – Lot: 9.02 – Zone: BR-1 – Dennis Collins is the attorney representing the applicants and he stated that even though this is a continuation but his intent is since they submitted revised plans to give a full presentation so any Board members who were not at that hearing could vote on this matter. He had the same witnesses as the last time, so Geoff Cramer swore in only Ray Savacool, Board Engineer/Planner. Mr. Collins proceeded to introduce himself and give a background as to why they are here again tonight. He has Brendan McHugh, Architect and Ray Carpenter, Engineer to testify. He asked Mr. Cramer to mark the new plans as Exhibits. He withdrew the previous exhibits and marked

A-1-A, which is an architectural elevation for floor plans prepared by Brendan McHugh, AIA, last dated September 26, 2014. 1-A-2-A is a colored rendering of the proposed building. A-3A – is a Site Plan prepared by Ray Carpenter, PE dated August 21, 2014. First he called Mr. McHugh to describe the property, he proceeded while using his design board to explain the structure as it exists and the proposal. When they do their proposed structure some of the existing walls would remain. On the first floor will be retail space that goes all the way back and there is some existing storage there, we are keeping the same concept with a retail showroom in the front, more retail area, an office and some storage. The design is three stories, first floor is retail, the second floor will have two apartments, the front apartment will have 838 square-feet, and the rear apartment is 856 square feet. On the third floor there is a third apartment, which is 838 square-feet. Each unit will have one bedroom. Mr. Collins said one of the issues the Board raised before was the provision of storage in accordance with the Ordinance requirements, he asked Brendan to describe what we propose related to storage. Brendan said now we have three storage areas, each which meets your requirements, on the third floor so that each resident has their own space off the common corridor. There are also deck treatments in the front as well as in the back. Brendan said they created French balconies in the front on the second and third floor, so basically they can open their windows and be part of the public area and have some views down to the Street and vice-versa. Also, on the third floor we created a roof garden so that they have some outdoor space to gather, so it's not just everything is interior. They re-designed the rear staircase from the previous plan, now they have an entry on the side of the building which separates the building into two and it's all enclosed in part of the building. The mechanicals for the first floor will be underneath the stairwell in a closet, the units on the second floor will have mechanical next to the laundry in the kitchen area, and the same for the third floor. The condensers for the units will be on the roof, they will be hidden as it's a steep pitched roof, about 4-feet tall and from the Street you won't be able to see anything up there as the height of the building is 38-feet. Next, he addressed the building materials, the façade treatment. They are going for a very traditional look, which will look great in Manasquan. They are also using concrete board for the front which is a very sturdy siding. They will have a white asphalt shingle roof at the top which will give it a very consistent look. High Cotton is the name of Mrs. Vowell's business. Any signage or lettering will be compliant with any Ordinance requests. Lenny asked if the side door would be locked, the answer was yes. He asked if the tenants would have an access, key or card. The answer was yes. He asked if there was going to be an elevator, the answer was no. Lenny said so the third floor they have to climb stairs, and there is a common space on the third floor also and the answer was yes. John Burke asked how many sets of doors are on the bottom level. Brendan said just the one for the apartment dwellings and they also provide bicycle storage down there also. Ray Savacool said the building does comply with the Ordinance requirements for height. Mark Apostolou asked if the roof access door would be locked and accessible only to tenants. The answer was yes. There would be railings or a wall around the rooftop. Mr. Collins said there would also be something in the leases regulating the use of that area, limited to tenants, times, etc., so there are no issues in that common area. Mayor Dempsey said he has two problems with the plan, one no elevator and the other is parking. Dennis Collins said he understands, this is a pre-existing building which they are slightly expanding to accommodate stairwells. It's a permitted Use, when we were at the last hearing we got

what we thought was support for parking Variances. We intend to use the Borough parking facilities in the rear, Main Street is prohibited overnight parking, and we are going to have such a notice in our Lease. He understands and respects the Mayor's position. Next, Ray Carpenter came forward to testify on the Site Plan as the Engineer/Planner for the applicant. He described the existing conditions and pre-existing Variances. The pervious coverage was 100% to begin with and is the same now. Other than the building coverage and the parking spaces all the variances are pre-existing, non-conformities. He addressed the parking area, and the easement along the building. Mr. Collins stated that there would be something in the tenants lease stating that no one could park in the neighbor's private lot. Mr. Carpenter addressed drainage and the fact that there was no change to the drainage pattern. It will all be funneled into the same spot as it is now. The water table is very high and there is not a deep basement, you are not able to stand up there. They could put a tank in the parking lot. The Board members stated their concern with drainage and the fact that in severe weather conditions icing may occur. It was stated by Mr. Collins that if they did get approval he suggested that the Board Engineer and Mr. Carpenter determine where that water table is and see if it actually would work and then they would be willing to do so. They would take direction from the Board Engineer. Mr. Savacool said if you have a building that you are expanding vertically and your existing setback is non-conforming, you are creating a Variance, you are aggravating that condition, so Variance relief is required for the expansion of the building to the second and third floor. John Muly in addressing the TRC report said all the questions have been answered, parking, mechanicals and the access to the deck, its all clear now. He thinks aesthetically it's going to be a fine addition to Main Street. The property owner owns 2-feet at the back of the building; at the front they own .6-feet. There is an 8-foot easement all the way from Abe Voorhees Drive all the way to Main Street. Mr. Collins stated the easement provides that they can't obstruct the easement, and the owner of the dominant tenement considers a planter obstructive then we are violating our easement. It will be a lot nicer than it is now. There will be lighting as the tenants will access the building from a door on the side. Mark Apostolou made a motion to open the meeting to the public, seconded by Councilman McCarthy, all in favor none opposed.

Audience Members Coming Forward:

Keith Henderson – he owns the adjacent property and he is in favor of the application. He thinks the concerns over the parking are somewhat exaggerated. The prior owner and we never had a problem at all. Two cars came in much like these folks will. His only concern is with the easement between the two buildings he suggests lighting along the side of their building and he was told that would be addressed.

Mark Apostolou made a motion to close the public portion of the meeting, seconded by Kevin Thompson, all in favor none opposed.

Mr. Collins gave his closing statement.

Kevin Thompson made a motion to approve the application as testified to, the motion was seconded by Mark Apostolou.

Board Members Voting Yes:

John Muly, Paul Rabenda, Councilman McCarthy, John Burke, Greg Love, Leonard Sullivan, Peter Ragan, Mark Apostolou, Kevin Thompson, Neil Hamilton

Board Members Voting No:

Mayor George Dempsey

There was a request for a five-minute recess.

Roll Call Following Recess – Board Members Present:

Mayor Dempsey, Neil Hamilton, John Muly, Paul Rabenda, Owen McCarthy, John Burke, Greg Love, Leonard Sullivan, Peter Ragan, Mark Apostolou, and Kevin Thompson

APPLICATION #24-2014 – Warjanka, Steve and Dara – 217, 221 Third Avenue – Block: 176 – Lot: 17.01, 74.07 – Zone: R-3 – This application is a continuation, for a modification of a subdivision on Third Avenue. Michael Holzapfel is the attorney representing the applicants. He said he has listened to the minutes of the last meeting and wanted to make sure the Board has in its file, a PowerPoint, he submitted an electronic copy but also distributed paper copies marked as A-1, there was the transcript of the voice mail from Mr. Furey that was submitted but not given a specific designation in the minutes, he referred to that as A-2 so the record is clear. The Board has my letter of June 11 to Mr. Furey that had Exhibits A through G which is already part of the Board file. Mr. Cramer's letter to me dated June 26th regarding the estoppels issue. What we submitted on September 25, 2013 based on what we thought the Board wanted to see based on the prior testimony, two kind of concept plans of what might be placed, Beach Girl 1, and Beach Girl 2, because that is what the design is called, he referred to that as A-3. We also submitted Mr. Lord who works with Mr. Fiore did update the Survey to reflect the deck which was a comment that the Engineer made the last time. He referred to that as A-4 and then as we go through our testimony one thing that we will be referring to is the Resolution from 2005 that approved the construction that is presently on our client's lot 17. It is relevant to some of the things we have to say. He had copies of that but Neil said he didn't believe we need that. Neil then said referencing the deck was a front yard averaging taken and was that completed. Mr. Holzapfel said it's on the legend. It's an interesting thing, he was looking at the plan this morning, it does appear that the steps and the deck encroach into the 15-foot front setback line, however those dimensions were in possession of the Engineer at the time the deck was denied but it was only denied for a side yard setback on the left hand side, it wasn't denied for any front yard encroachments. The legend does indicate that no Variances were required. If the Board feels that a Variance is required we will be prepared to talk about the front and side yard setback to the extent you need an amended plan we can get Mr. Lord to do that. Neil said on the Zoning Officer's report he mentioned the deck as an encroachment in the side yard, it was not stepped back to be in compliance with the 5-foot. Did he take into account the front yard averaging needed a Variance? Mr. Holzapfel stated Mr. Furey's letter dated June 12, 2014 said the application for a 10 X 21-foot raised deck was denied for the following reasons: he listed the reasons and said it didn't say anything about the front yard encroachments. Neil said so if you are going to continue with that deck you are going to need a Variance for that because obviously the placement of that front door, there is no way to step that deck in and get out of the house. Mr. Holzapfel said that is correct. Mr. Cramer said you mentioned an earlier Resolution 2003, what was the heading on that? Mr. Holzapfel said 11-2005, application of 221 Third Avenue, LLC seeking approval to demolish existing two-family dwelling and to construct a

new 2 ½-story dwelling at 221 Third Avenue and for approval of Bulk Variances from the Zoning requirements of the Borough of Manasquan Zoning Ordinance. Geoff asked the applicant's name. Mr. Holzapfel said 221 Third Avenue, LLC. Mr. Henderson represented the contract purchaser. Next, he said they had created quite a record the last time he talked at length about our estoppels issue under C-1.3 and how that might cause a Hardship. He may refer to it when he summarizes very briefly. He wanted to cut right to the chase and address why this application warrants an approval. He offered the testimony of Mr. Justin Auciello who is a licensed professional Planner. Mr. Cramer swore him in, after giving his credentials he was accepted by the Board. Mr. Holzapfel cross examined Mr. Auciello regarding the background of the property in question. He addressed the previous Resolution on the property from 2005 and the concerns he has regarding what was approved on the property by the Planning Board on a 2700 square-foot lot. Mr. Holzapfel and Mr. Auciello stated that moving the lot line on the existing property was good planning. That would improve many existing non-conformities that currently exist on that lot. Moving the lot line 13-feet further north would in fact make the lot fully conforming with the exception of the existing left side yard. He went on to speak to the reasons he believes the lots should be switched. He addressed the concept plans that were entered as an exhibit. Neil Hamilton asked Mr. Holzapfel to run through this quickly, and then he would speak to get this back on track, we are drifting away from what this Board is charged to do. Mr. Holzapfel asked Mr. Hamilton to explain why he thinks they are drifting. Mr. Hamilton said the reason you are here is we granted a three lot subdivision, there are Variances on the first home that still exists from the Kiels, and in the Resolution they provided fully conforming and in excess of the square-footage that's required for the Zone. The plan was in the Resolution both the daughters, heirs to the Estate were going to build their homes there. There is a sign on one of the parcels right now, so someone is going to build a home there. So, whatever has transpired for whatever reason one of the Keil people decided to put this lot for sale. Where we are at today is, we granted a Resolution for conforming lots, with the hope that conforming structures would be built on them. We didn't concern ourselves with what is on either side of the Street or what's down on Brielle Road. They are all pre-existing structures that were either damaged by Sandy or prior to Sandy, came to this Board for Variance relief and this Board heard those individual cases. And you know Land Use; you have to hear each case on its individual merits. That's neither here nor there with this case; this case is right now – does this Board want to entertain a re-subdivision of an application of a conforming lot or flip flop however you and your professional want to couch this. We don't need to see what is possibly going to be built there, because if we grant this the applicant's going to come back, either we are going to condition it on the new lot, no matter what the size is and it's going to be part of that subdivision amendment that we want a conforming structure built on there. So, the seller and/or applicant to take that risk that they can sell that piece of property knowing that this is a condition so it's going to impact the value. I talked to the Engineer today and I also did speak to the attorney on this. I offer this as a compromise, now the Board may not agree with me at all. You raise the fact that you want to flip the lots and make one less conforming and the other one more conforming. The Kiel property is over by 600-square-feet, you could say well it might be easy to take that 600-square feet and put it over and give it to the Warjanka's. The problem is it shrinks down the required footage, the front footage of 40-feet. So, you take the 600-square footage off that, the Kiel lot will still be in

conformity as far as area but it will be short as far as required frontage on Third Avenue. But it takes the frontage from 40 down to 34-feet. You could build a substantial, livable, winterized, nice home, elevated with 3400-square feet on a 34-foot wide lot, without any Variances. It would add 6-foot of property to the Warjanka's which would bring them up just a tad short of the lot width, and the required Bulk square footage required for the lot in the Zone. If the Board wants to entertain that or consider it, I think maybe in this scenario, it's a fair compromise, she's getting 6-feet more to her property, it provides for the driveway that you talk about and it still allows for a substantial home to be built without Variances on the vacant lot that is being purchased. I would be adamant against myself in voting for anything more of giving 6-feet off the Kiel property to this one. Mr. Holzaphael said there is a lot in that statement and everything you said was fair Mr. Chairman, could we poll the Board as to whether or not they are even interested in that. Mr. Hamilton said the Board heard what I said and I have no problem polling the Board as to whether or not they want to entertain a compromise or they may decide you know what, we're sticking with the subdivision Resolution of conforming lots, and we are not going to entertain any amendments at all. Mr. Holzaphael said he would like to do that that then address what's really almost a res judicata collateral estoppels, because I think what the Board is saying and several members raised this is they interpret the Kiel's subdivision Resolution on future development on what was approved last year complying with all of the bulk requirements of the Borough and I can speak to that as a legal issue, but I think first I would like to know whether or not the compromise is even something the Board would entertain. We do have an objector here too. Owen asked Neil about the numbers, one would be 33 and one would be 34, and the Kiel lot would still be 40. Board members making comments were: Burke, Apostolou, and McCarthy. Mr. Holzapfel said it does appear based on the Survey that certainly the fence but the shed and a portion of the patio that was already installed would have to come out. My client's are going to want to know the affect so I am just stating that. Mrs. Warjanka said if you drive into her driveway your car doors are so close to her house that when you open the car doors, you would actually hit the house. Mr. Hamilton said we can't fix your problem, the lot is what it is. Next, Mr. Hamilton said let's poll the Board. John Burke said he likes what Neil was talking about here, absolutely. Greg Love said it sounds like a fair compromise. Lenny Sullivan said he would consider it, otherwise he would say no. John Muly said he would consider it. Paul Rabenda said he is not interested in any compromises, until he is satisfied on the property to the South and the question he asked at the last meeting which he doesn't believe was answered to his satisfaction. Neil said we will come back to that. Next, Kevin Thompson said he is undecided. Peter Ragan said he is inclined to say no, but he would like to keep an open mind consider the compromise. Mark Apostolou said he would be dependent on the objectors, under due process we would have to consider what the objectors have to say and as a Board he doesn't believe as a Board we can offer that compromise without the objectors being involved. Owen McCarthy said he agrees with the Judge's comments, he would like to hear everything before he makes an opinion. George Dempsey said he is for no, we got the Resolution from the Keil property which says no further impact. Mr. Holzapfel said that doesn't help him much let him speak to the Keil Resolution and make his record. Neil asked if he wanted to let the objectors make their comments and get that out of the way. Kevin Thompson made a motion to open the meeting to the public, seconded by Mark Apostolou all in favor none opposed.

Audience Members Coming Forward:

Jean Keil – 217 Third Avenue – her family has had property there for over 90 years, she grew up there and is well aware of space and noise the negatives of down there. She is also aware of how much the block is turning around. Her objections are really are the setback on her side and the lot coverage. She wants a five-foot setback on her side. She would like to see something binding that would keep that property away from her property line so she would have 10-feet. She said the house that the Warjanka's purchased was built prior to their ownership and she did see the negative effect it had on the water usage, the water disbursement after the rain, it did come into her parent's rental house. They took down the two rental houses on purpose; we want to improve the lot. She wants to insure safety and livability on her side, noise, light and air flow and the ability to sit on her back porch and have 10-feet between and whatever building goes up next to her. She has the land that now has the Imagineering Sign on it; her sister's house is my parent's house which she is renovating. None of the properties are for sale. Neil asked who is selling this lot to the Warjanka's? She said the lot was already sold. There were three lots, Susan owns 205, I own and am building on 211 in the middle and 217 is now the Warjanka's property. We sold it as a 40-foot lot. The Warjanka's have made improvements on their property and they are trying to do their best. She does feel though that if we do not put something in place and the lot setback then she is the one who will bear the burden of it. Mark Apostolou if Mr. Henderson is representing Ms. Keil and may he suggest that Mr. Henderson take five-minutes with Mr. Holzapfel and see if they can resolve it. Mr. Henderson said we have tried, our position has been from the beginning is they merged these properties. Mr. Henderson said this Board really doesn't have the power to subdivide this property without seeing what was going to go there. We will settle with you if you will if you will simply stipulate there will be no Variances applied for if we do that. Mr. Henderson said we will accept if the Board wants to grant a Variance on the South side for setback, but we object to any other Variances and we object to the Board granting a subdivision without the Board seeing what those Variances are. Mr. Holzapfel said that is what we are trying to do and these lots are not merged. They are taxed separately; they have separate parcel ID's. One was purchased in the name of a Corporation; this is not a merged lot. The settlements didn't go anywhere and that is one of the things we wanted to try to introduce tonight because of the objections that they raised was the Keil's want a Deed Restriction that basically recites the Ordinance, which sounds all well and good but especially with regard to things like height in order to meet new FEMA requirements, I can't sit here and represent to this Board, even though I think I can give you a very good idea based on what we have submitted on Beach I and Beach II, that absolutely no Variances would ever be required if you were to approve the subdivision that we are requesting.

Tom Bateman – 43 Pearce Court – he said so to get up to speed, you approved a subdivision creating 3 40-foot lots, these folks want to buy a 40-foot lot and join it to their property. Now they want to subdivide it into two non-conforming lots. It was told to Mr. Bateman that no what they want is to flip flop the lot sizes. Tom Bateman said in that Zone, you would be creating a non-conforming lot. He said that doesn't make a lot of sense, so no.

Keith Henderson – Attorney for the Keil's, he said those lots were both Deeded to Mr. Warjanka and therefore as far as he is concerned there is a merger. Plus, you can't have

an accessory Use on a lot without a principal use, they've built all these accessory activities on there, they have a fence, a driveway, if that's a separate lot with a separate entity how did those things get there? Mr. Holzapfel said to respond and at the risk of doing exactly what the Chairman would prefer I not do, the reason why it was deeded into Mr.

Warjanka's name individually is because that's what my client's were instructed to do. We have already made our presentation on that and I'm not going to repeat it, but that's why I think you cannot hold our feet to the fire on that.

Mark Apostolou made a motion to close the public portion, the motion was seconded by Leonard Sullivan, all in favor none opposed.

Mr. Holzapfel in his closing argument said that he would speak to the issue that the Chairman and Judge Apostolou raised the last time about whether or not the Keil subdivision approval precludes us from asking for what we are asking for now and technically creating that undersized lot. He gave a very thorough closing argument stating NJ Statutes of lawsuits and rulings. Mark Apostolou asked for a legal opinion from the Board attorney and Mr. Cramer said the Resolution speaks for itself. Neil Hamilton said we are at the 50-minute mark right now. Mr. Holzapfel asked for guidance. Mr. Hamilton said you have heard from this Board now you need to tell us right now what you want us to vote on. Tell us exactly what you want and then we can move on from there and call for a vote. Mr. Holzapfel asked if the Board wanted to hear from the Planner. Mr. Hamilton said if the subdivision is approved and you sell that piece of property, conceptual plans are going to Zoning Officer, they will get their denials and we will move on with that. Your issue tonight is getting this subdivision through us. If a proposed house doesn't meet criteria it's going to come back to us anyway. You have heard from the public, the lady is looking for protection and certainly that's going to be in the subdivision criteria, Mr. Cramer is going to put in there in whatever language you are bringing up in Cox and conflict, hopefully we have covered our bases that we are not going to grant any Variances for that lot. We want a fully conforming structure. Mr. Holzapfel said the client is looking for an approval of this re-subdivision, absent deed restrictions on the property. What I think they want to do and the Board can vote however it sees fit. My clients would like to have this Board take an up or down vote as to whether or not they would approve the re-subdivision without tying up the property in deed restrictions with the notion that if they can build a conforming lot, great but if they can't and somebody sticks a toe over the side yard setback by 6-inches they want to know that there is a point to coming back to this Board requesting a Variance if in fact a Variance is justified. Mr. Hamilton said we are going to set the parameters in this Resolution if the subdivision is granted; we are not going to give any open ended leeway on that. It hasn't been our practice. Mr. Holzapfel said then it would be preserved for appeal, if we wanted to appeal the condition. Mr. McCarthy said he doesn't know how Mr. Holzapfel can ask us a hypothetical about something that's not in front of us. Mr. Holzapfel said we tried to do that by submitting conceptual plans. Mr. McCarthy said but you exceeded the height restriction for a non-conforming lot. Mr. Holzapfel said we are prepared to talk about that if anybody wants to listen. Mr. Apostolou said he understands what Council is saying for the applicant, he doesn't want to be guilty of malpractice by laying out the entire argument because based on Mr. Henderson's original objection he is entitled to present to the Board, Beach girl I and II, in order to prove that record. We certainly can't do that tonight. We also under due process don't want to cut Mr. Henderson's rights off or the objectors here this evening, so he thinks

the only proper thing to do is to carry it for another day. The Board members agreed with carrying the application. Lenny asked if this were carried is there a time limit on this merger of properties just happens. Geoff Cramer said we would have to ask for a waiver of time to act. Mr. Holzapfel said the merger issue is a legal issue, if Mr. Henderson wants to argue that the lots have merged, he's going to have to go get a declaratory judgment from the Chancery Division that they have merged. The reality is as far as the Borough of Manasquan is concerned they are separate lots, with separate identifying numbers, separate addresses, they are taxed separately. Mr. Apostolou said he thinks Mr. Sullivan's point was if we don't act tonight do you get an automatic approval of the subdivision. Mr. Holzapfel said we would agree to waive the Board's time to act. Mr. Cramer said thank you. Mr. Holzapfel asked for 30-seconds with his client. It was noted that December 2, 2014 at 7PM was the next available meeting this could be carried to. Mr. Hamilton said while Mr. Holzapfel was discussing the issue with his clients the Board would move on with business.

RESOLUTION #30-2014 – Romano, Lori and James – 59 Rogers Avenue – Mark Apostolou moved to memorialize the motion was seconded by Kevin Thompson.

Board Members Voting Yes:

Neil Hamilton, Paul Rabenda, Leonard Sullivan, Mark Apostolou, and Kevin Thompson.

RESOLUTION MEMORIALIZED

Kevin Thompson made a motion to pay the Vouchers, the motion was seconded by Peter Ragan, all in favor none opposed.

VOUCHERS APPROVED

Mark Apostolou made a motion to approve the minutes of September 16, 2014; the motion was seconded by Kevin Thompson, all in favor none opposed.

MINUTES APPROVED

Correspondence, the Deed for Sceratto/Howell subdivision is in the Board's file for approval, Geoff and Ray will review for approval and they will be signed by the Chairman and the Board Secretary.

Next, Neil said we need a Nominating Committee Chairman and he understands Greg Love has offered to Chair the Committee, we have one request from Geoff Cramer, we need one from T & M anyone else who may be interested in serving as a Professional for next year will submit them to Mary and she will get them to Greg, hopefully we can make a decision at the next meeting, so we have that ready to go for December.

There was an e-mail that went out to cancel the Second meetings of November and December; the Board was in agreement for that. Mark Apostolou moved to formally vote, John Burke seconded, all in favor none opposed.

4PM – SECOND MEETINGS OF NOVEMBER AND DECEMBER CANCELLED

Mr. Holzapfel said his client's desire is a vote tonight by the Board they don't wish to wait until December. They want an up or down vote on the re-subdivision as presented. Neil

asked what the parameters that we are voting on as far as moving the lines, 6-feet, 13-feet, where do you want to move the lines. Mrs. Warjanka said she would like to keep it as it is right now and would also like a decision on the deck that was also presented. Neil said we need to get to the subdivision first, so you are asking to take 13-feet from the lot to the north and add it to your piece of property to the south. Mr. Holzapfel said the inversion of north and south. Mark Apostolou said with no restrictions on that newly created lot. Mr. Holzapfel said no restrictions other than the caveat obviously that if whatever plans are to be presented can't conform, this Board has to approve them or not, and we are aware of the self created Hardship doctrine under Land Use Law we are aware of all of that. We just think the property shouldn't be tied up in Deed Restrictions and conditions when I can't sit here and fairly represent to the Mayor and the Chairman and Mr. Cramer that nothing is going to encroach by an inch. Neil said the issue before this Board, Mary will call the roll is they want 13-feet taken from the north lot, put onto the south lot, with no conditions placed on the re-subdivision for the lot to the north which will now be pretty much totally non-conforming, and that will be the vote before this Board tonight. Mr. Cramer said before the Board votes Council you are relying upon the subdivision plat in your Exhibit A-4, correct, that's the most recent update you are referring to. Mr. Cramer doesn't know if all the Board members have seen A-4, George said it was given to them tonight. Neil asked for a motion. Neil made the motion, there will be a Variance in there for the deck, and the re-subdivision with no restrictions to be placed at this point in time on the lot to the north which will now be created as a non-conforming lot, Mark Apostolou seconded the motion. Now the Board will vote on the request:

Board Members Voting No:

Mayor Dempsey, John Muly, Paul Rabenda, Councilman McCarthy, John Burke, Greg Love, Leonard Sullivan, Peter Ragan, Mark Apostolou, Kevin Thompson, Neil Hamilton.

APPLICATION DENIED

Kevin Thompson made a motion to open the meeting to the public, seconded by Mark Apostolou, all in favor none opposed.

Mark Apostolou made a motion to close the public portion of the meeting, seconded by Councilman McCarthy.

John Burke said he has something in Town, Jaspan Hardware punched a hole in the pavement and put up a sign for FedEx, it's a flapping banner on the corner, it's on Borough property. Neil said that would be Code Enforcement, Frank DiRoma is in the audience and he will take care of it tomorrow.

Councilman McCarthy asked about the meetings for 2015 and would it make sense to change the time of the second meeting, Peter Ragan said he feels bad that he can't come. Neil said if we can't get a quorum we will have to cancel the meeting. There was a lot of discussion and it was stated to keep the time at 4PM for the second meeting and also as of the first of the new year to be heard at a second meeting will again be a charge of \$1000.00 additional application fee and it will be again called a Special Meeting.

Mark Apostolou moved to adopt the meetings as scheduled, left at 4PM and therefore also move that we charge \$1000.00 for the Second Meeting which will be a Special meeting if needed, seconded by John Burke, all in favor none opposed.

Kevin Thompson made a motion to adjourn the meeting, seconded by Mark Apostolou, all in favor none opposed.

MEETING ADJOURNED AT 9:25PM

Respectfully Submitted,

**Mary C. Salerno
Planning Board Secretary**